

REMARKS/ARGUMENTS

The rejections presented in the Office Action dated December 4, 2009 (hereinafter Office Action) and the subsequent Advisory Action dated March, 10, 2010 have been considered. Claims 86-123 remain pending in the application. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Claims 86, 88-89, 91-98, 101, 104, 106-107, 109, 111-117 and 121 are rejected based on 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,902,250 to Verrier et al. (hereinafter “Verrier”) in view of U.S. Publication No. 2005/0119711 by Cho et al. (hereinafter “Cho”) and further in view of U.S. Publication No. 2003/0083241 by Young (hereinafter “Young”). Claims 87 and 105 are rejected based on 35 U.S.C. §103(a) as being unpatentable over Verrier in view of Cho and Young and further in view of U.S. Patent No. 6,387,907 to Hendricks et al. (hereinafter “Hendricks”). Claims 99 and 118-119 are rejected based on 35 U.S.C. §103(a) as being unpatentable over Verrier in view of Cho and Young and further in view of U.S. Patent No. 6,572,557 to Tchou et al. (hereinafter “Tchou”). Claims 102-103 and 122-123 are rejected based on 35 U.S.C. §103(a) as being unpatentable over Verrier in view of Cho and Young and further in view of U.S. Publication No. 2003/0111079 by Mathews et al. (hereinafter “Mathews”) and further in view of U.S. Publication No. 2004/0249299 by Cobb (hereinafter “Cobb”).

The Applicant respectfully asserts that the claims as previously presented are not anticipated or obvious in view of the references asserted. However, in order to facilitate prosecution of the application, the Applicant presents this response to enhance an appreciation of particular aspects of the claimed invention. No new matter has been added.

Independent claim 86 has been amended to express sensing muscle tone in a pectoral region using a sensor disposed on a cardiac rhythm management device and detecting REM sleep status based on the sensed muscle tone. Independent claim 104 has been amended to include that the first sensor is disposed on a cardiac rhythm management

device. Claim 104 has been further amended to include that the therapy system is configured to deliver cardiac therapy based on sleep state classification. Claim 110 has been amended to include subject matter from now canceled claim 111. For example, claim 110 has been amended to disclose a cardiac rhythm management device.

The Applicant respectfully asserts that the combination of Verrier, Cho and Young at least fails to teach or suggest sensing muscle tone in a pectoral region of a patient using a sensor disposed on a cardiac rhythm management device and detecting REM sleep status based on the sensed pectoral muscle tone.

The combination of Verrier, Cho, and Young does not describe each element of Applicant's claims 86 and 104. For at least these reasons, Applicant's claims 86 and 104 and all claims dependent thereon are not obvious in view of the combination of Verrier, Cho, and Young. Hendricks, Tchou, or Mathews and Cobb in combination with Verrier, Cho, and Young do not remedy the deficiencies of Verrier, Cho, and Young in describing all of the elements of the Applicant's claims. For at least the reason that the cited references do not describe each element of Applicant's claims 86 and 104, Applicant's claims 86 and 104 and all claims dependent thereon are not obvious in view of this combination of references.

To the extent the Applicant has not responded to any characterization by the Examiner of the asserted art or of the Applicant's claimed subject matter, or to any application by the Examiner of the asserted art to any claimed subject matter, the Applicant wishes to make clear for the record that any such lack of response should not be interpreted as an acquiescence to such characterizations or applications. A detailed discussion of each of the Examiner's characterizations, or any other assertions or statements beyond that provided above is unnecessary in view of the present response. The Applicant reserves the right to address in detail any such assertions or statements in future prosecution.

Authorization is given to charge Deposit Account No. 50-3581 (GUID.060PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the Examiner is invited to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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